IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1046 OF 2007

Vishal Bhagwan Patil. ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.S.R.Chitnis, Sr. Adv. i/b. Mrs.V.R.Raje, for the Applicant.
Mr.V.B.Konde-Deshmukh, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 16th April, 2007.

P.C.:

1. Heard the learned Senior Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking bail in C.R.No.I-175 of 2006 of Taloja Police Station. The said case is under Sections 498-A, 302 of IPC.

3. The applicant was the husband of Sushma. Sushma was married to the applicant about two years prior to the incident. Sushma was about 22 years old at the time of the incident. The complainant has stated that the applicant used to frequently ask Sushma to get money from her parental home and on account of this he used to ill-treat her. He has further stated that four

months prior to the incident, the applicant had demanded money to purchase a motorcycle and on that count he was ill-treating and beating Sushma. The complainant has further stated that on account of this, he deposited an amount of Rs.40,000/- in the account of Sushma. On 26.10.2006 the complainant was informed that his daughter Sushma is ill and he should immediately come to the house of the applicant. On reaching the house of the applicant, the complainant found that his daughter Sushma was lying on the floor. Her neck was swollen and blood was coming out of her mouth. The complainant has stated this fact in his complaint and thereafter he has stated that the husband of Sushma i.e. applicant has pressed neck and mouth of Sushma and murdered her.

4. The post-mortem notes show two injuries i.e. 1.abrasion over lower lip 1 X 0.5, and 2.contusion over neck superficial above the cvical cartilage 7 c.m. X 1 c.m. just above hyoid bone (left) side haemorage, bleeding present.

5. Mr.Chitnis, has submitted that no cause of death has been given. The viscera has been preserved and the viscera report is yet not received. He has submitted that in these

circumstances it cannot be said that it is a case of murder. Mr.Chitnis has relied on certain observations in 23rd edition of Modi's Medical Jurisprudence and Toxicology in support of his contention that it is not a case of strangulation as made out by the complainant.

6. The injuries as seen from the post-mortem notes clearly show that the death was not accidental. Hence, it could be a case of suicidal death or a case of murder. The fact remains that Sushma died under suspicious circumstances within seven years from the date of marriage and in such case presumption under Section 113(B) of the Evidence Act can be raised in this case. Moreover, Sushma has died in her matrimonial home. The statement of witness Vanita Bhagwan Patil shows that the applicant and his wife were staying in a separate room in the said house.

7. Thereafter, Mr.Chitnis submitted that two of the coaccused have been granted bail by this Court. He submitted that the case of the applicant is similar to that of coaccused and hence the applicant may be granted bail on the ground of parity. As far as this aspect is concerned, I have perused the said order dated

5.12.2006 whereby the coaccused were granted bail. In the said order it is reflected that the statement of the father clearly alleges that the deceased was strangulated and killed by Vishal i.e. present applicant. The said order also reveals that the husband Vishal made demands for money from time to time from the deceased so also her parents satisfied the same in cash and by giving articles. Looking to the said order and the facts as reflected in the FIR the case of the applicant cannot be said to be similar as that of the coaccused.

8. Looking to all these facts, I am not inclined to grant bail to the applicant at this stage. Application for bail is rejected.

9. However, the prosecution to expedite the viscera report. Liberty is granted to the applicant to prefer a fresh application for bail at later stage on receiving viscera report.

(SMT.V.K.TAHILRAMANI,J.)